

**THIS DISPOSITION
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THE TTAB**

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Project Seed, Inc.
v.
Sharon K. Quigley

Opposition No. 91161428
to Application No. 76542722
filed on September 8, 2003

Thomas M. Singman, Esq. for Project Seed, Inc.

Sharon K. Quigley, Pro Se.

Before Quinn, Walters and Walsh, Administrative Trademark
Judges.

Opinion by Walters, Administrative Trademark Judge:

Project Seed, Inc. filed its opposition to the
application of Sharon K. Quigley to register the mark SEED
for "promoting public awareness of the need for social
competency curricula in elementary, middle and high
schools," in International Class 35.¹

¹ Application Serial No. 76542722, filed September 8, 2003, based upon
an allegation of a bona fide intention to use the mark in commerce in
connection with the identified services.

As grounds for opposition, opposer asserts that applicant's mark, when applied to applicant's services, so resembles opposer's previously used and registered mark PROJECT SEED for "educational services, namely, conducting training courses for instructors in teaching methods and providing instruction in mathematics"² as to be likely to cause confusion, under Section 2(d) of the Trademark Act.

Applicant, in its answer, admitted that opposer is the owner of the pleaded mark and registration, and that opposer has been using its mark PROJECT SEED "in interstate commerce in connection with its educational services since at least as early as October 1974, continuously to the present."

(Notice of Opposition, paragraph 1.) Applicant denied the remaining salient allegations of the claim.

The Record

The record consists of the pleadings; the file of the involved application; a certified status and title copy of Registration No. 1852680; and, in accordance with the stipulation of the parties, responses of opposer to applicant's interrogatories, web pages from opposer's website produced in response to applicant's request for production of documents, and the declaration of Marlene Johnson, opposer's controller, all made of record by

² Registration No. 1852680, issued September 6, 1994, in International Class 41. [Renewed; Section 15 affidavit acknowledged.]

opposer. Applicant submitted no testimony or other evidence and only opposer submitted a brief.

Factual Findings

Opposer, Project Seed, is a non-profit organization founded in 1963 to use mathematics to increase the educational opportunities for urban youth. Applicant works in partnership with school districts, universities and corporations to teach mathematics to low-achieving students in schools and to provide teacher training. Applicant began providing these services as early as October 1974. Opposer submitted print media evidence in support of Ms. Johnson's statements that the media often refers to opposer as "Seed." Opposer promotes its services on its website and via brochures, bulletins and through presentations at meetings of professional organizations to which it belongs. Opposer has been featured in media articles, research-based books and on national television.

The record contains no information about applicant other than what appears in her application.

Analysis

Inasmuch as a certified copy of opposer's registration is of record and applicant admitted opposer's ownership of its pleaded mark and registration and opposer's use of its mark since October 1974, there is no issue with respect to

opposer's priority. *King Candy Co., Inc. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

Our determination of likelihood of confusion under Section 2(d) must be based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976). See also *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

With respect to the services of the parties, we do not agree with opposer that applicant's proposed services, identified as "promoting public awareness of the need for social competency curricula in elementary, middle and high schools" encompass the services identified as "educational services, namely, conducting training courses for instructors in teaching methods and providing instruction in mathematics" in opposer's registration and as those services are described in the record. While opposer's services involve the actual provision of mathematics classes to

students and training to teachers, applicant's proposed services involve promotional services aimed at obtaining curriculum additions or changes in schools. Both parties' services pertain to education and to specific curricula taught in primary through high schools. Moreover, based on the record, it is clear that opposer's services involve a very specific curriculum that is unique, and that opposer must promote its curriculum in order to form the partnerships necessary to render its services. Thus, we must conclude that the services of the parties are closely related.

Further, both opposer's and applicant's identifications of services are broadly worded, without any limitations as to channels of trade or classes of purchasers. We must presume that the services of the applicant and opposer are sold in all of the normal channels of trade to all of the usual purchasers for services of the type identified. See *Canadian Imperial Bank v. Wells Fargo*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987). Educators, schools, parents and education-related organizations are the likely class of purchasers for both parties' services. The respective methods for reaching this population is likely to be overlapping, if not the same, for both parties. In other words, we conclude that the channels of trade and class of purchasers of the parties' services are the same.

Turning to the marks, we must determine whether applicant's mark and the registered mark, when viewed in their entireties, are similar in terms of appearance, sound, connotation and commercial impression. The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impressions that confusion as to the source of the goods or services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Further, while we must base our determination on a comparison of the marks in their entireties, we are guided, equally, by the well established principle that, in articulating reasons for reaching a conclusion on the issue of confusion, "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties." *In re National Data Corp.*, 732 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

Applicant's mark is identical to one of the two words in opposer's mark. In arguing that the marks are

substantially similar, opposer contends that SEED is the dominant portion of its mark and that the connotation of SEED in both marks is the same, i.e., that, in terms of educational growth, it suggests planting a seed. We find it unnecessary to determine that SEED is the dominant portion of opposer's mark or what the term may suggest. However, we note the media's use of SEED to refer to opposer may imply the dominance of that term over the more suggestive, if not descriptive, term PROJECT. Even if the mark is unitary and both words have equal prominence, we agree that the connotation, appearance and commercial impressions of the marks SEED and PROJECT SEED are sufficiently similar that, in view of the identity of services herein, confusion as to source is likely.

In conclusion, in view of the substantial similarity in the commercial impressions of applicant's mark, SEED, and opposer's mark, PROJECT SEED, their contemporaneous use on the related services involved in this case is likely to cause confusion as to the source or sponsorship of such services.

Decision: The opposition is sustained.